

Informal Working Paper No. 5/Rev.2*
27 August 1974

SECOND COMMITTEE

NOTE

This document has been reviewed by the Bureau in the light of the discussion in the Committee. Since no modifications have been introduced in the text of Informal Working Paper No. 5/Rev.1, the text remains as presented therein.

* This document is to be read in conjunction with Informal Working Paper No. 5/Rev.1.

ORIGINAL: ENGLISH

SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

In submitting this informal working paper, the Bureau is conscious of the fact that the provisions contained therein are in fact mutually exclusive alternatives to the provisions contained in the informal working paper No. 4 on the exclusive economic zone.

In submitting this paper the Bureau considers it necessary to stipulate that for purely methodological reasons, the positions of those delegations for whom the concept of a zone of preferential rights would be subsumed in a territorial sea that could be extended up to 200 miles, is not reflected as a trend in this paper.

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With respect to item 7.4 (prevention and control of pollution and other hazards to marine environment) it should be noted that there are other proposals under consideration in the Third Committee.

The question of the settlement of disputes will be considered under item 21 (settlement of disputes). The Committee will then consider whether to place all the provisions in a separate chapter or to split them into relevant chapters.

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ITEM 7: COASTAL STATE PREFERENTIAL RIGHTS OR OTHER NON-EXCLUSIVE JURISDICTION
OVER RESOURCES BEYOND THE TERRITORIAL SEA

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7.1 Nature, scope and characteristics

PROVISION I

In a zone beyond its territorial sea, hereinafter called "the zone", the coastal State may exercise the rights and powers set forth in these articles.

PROVISION II

1. Subject to the articles set forth below, all States shall have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea.
2. Such exploitation shall be regulated for the benefit of nationals of all States in such a way as to ensure the rational exploitation and conservation of the fishery resources of the sea in the interest of mankind as a whole.
3. For these purposes:

(a) In the zone referred to in ..., coastal States shall enjoy the fishing rights defined in these articles;

(b) All States shall maintain close co-operation at both the world and the regional levels in accordance with the following articles.

PROVISION III

1. The zone shall not extend beyond (x) nautical miles measured from the baseline of the territorial sea.
2. The extent of the zone shall be determined by the coastal State, within the limit referred to in paragraph 1, taking into account all relevant factors, in particular the geographical characteristics of the area and the fishery resources and their distribution off its coasts.

PROVISION IV

Where the coasts of two States are opposite or adjacent to each other, the delimitation of their respective zones within the limit specified in article ... shall, failing agreement between them, be established in accordance with the provisions of article ...

7.2 Sea-bed resources

7.3 Fisheries

PROVISION V

Formula A

1. To the extent consistent with the objective of conservation, a coastal State shall have a preferential right to ensure adequate protection to its coastal fisheries conducted in the adjacent waters, immediately beyond the limit of 12 miles from its coast, as follows: /...

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(i) In the case of a developing coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish it can harvest on the basis of the fishing capacity of its coastal fisheries. In determining the part of the allowable catch to be reserved for the developing coastal State, the rate of growth of the fishing capacity of that State shall be duly taken into account until it has developed that capacity to the extent of being able to fish for a major portion of the allowable catch of the stock of fish.

(ii) In the case of a developed coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish which is necessary to maintain its locally conducted small-scale coastal fisheries. The interests of traditionally established fisheries of other States shall be duly taken into account in determining the catch to be reserved for such small-scale coastal fisheries.

2. Measures to implement the preferential rights shall be determined by agreement among the coastal and non-coastal States concerned on the basis of the proposals made by the coastal State. For the purpose of such proposals, the coastal State may seek technical assistance from the Food and Agriculture Organization of the United Nations or such other appropriate organs.

3. The size of the preferential right of a coastal State shall be fixed within the limit of the allowable catch of the stock of fish subject to allocation, if the allowable catch for that stock is already estimated for conservation purposes. In cases where the estimate of the allowable catch is not available, the coastal and non-coastal States concerned shall agree on necessary measures in a manner which will best enable the coastal State to benefit fully from its preferential right.

4. No special status in the conservation of resources and no preferential rights shall be recognized to a coastal State in respect of highly migratory stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through the existing international or regional fishery organizations should such be the case.

5. No special status in the conservation of resources and no preferential rights shall be recognized to a coastal State in respect of anadromous stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through the existing international or regional fishery organizations should such be the case.

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Formula B

1. When in the interests of conserving any species it is necessary for the coastal State to fix a total allowable catch within its zone, it shall determine the total allowable catch so as to ensure the maintenance of the maximum sustainable yield.
2. The coastal State shall submit the figures determined pursuant to paragraph 1 to the appropriate regional or sectoral organizations. Those organizations may, on the basis of all relevant scientific data, recommend other figures.
3. Two or more coastal States may by mutual agreement decide to request a regional or sectoral fishing organization of their choice to determine the figures provided for in paragraph 1 for all stocks exploited jointly.
4. Within the framework of the above-mentioned aims of rational exploitation and conservation of fishery resources and taking account of the maximum allowable catch determined by the coastal State pursuant to paragraphs 1-3, as well as any recommendations made by appropriate organizations also pursuant to paragraph 3, the coastal State may reserve in its zone that part of the allowable catches of one or more species which vessels flying its flag are able to take.
5. When exercising its right under paragraph 4, the coastal State shall duly take into account the right of access of other States and particularly of:
 - (a) States which have habitually fished in the zone;
 - (b) Developing States of the same region, provided such States have not invoked paragraph 1 above to reserve for vessels flying their flag all the fish they can catch in their own zone;
 - (c) States whose economies are to a very large extent dependent on fishing, where such States have not satisfied their needs by invoking the provisions of this article;
 - (d) States of the same region with limited fishery resources whose economy is especially dependent on fishing;
 - (e) Land-locked States.
6. In implementing paragraphs 4 and 5, allowance shall be made for cases where the coastal State adopting the measures referred to in paragraphs 4 and 5 is a developing country or a country whose economy is to a very large extent dependent on

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fishing. A coastal State may claim the same right with respect to those parts of its territory in which the population is especially dependent on fishing for its livelihood and lacks alternative opportunities for permanent employment.

7. A coastal State wishing to avail itself of paragraphs 4-6 shall, in accordance with article ... notify the competent organization of the proposals concerning the rights to one or more species in its zone which it wishes to have reserved to vessels flying its flag and those to be granted to other States. The organization shall immediately hold consultations on these proposals. Failing agreement within four months of notification, the coastal State may determine, at a level equal to or lower than the proposed level, the rights it will reserve to vessels flying its flag.

8. Any State which considers that such decision taken by the coastal State is in violation of the rights accruing to it under paragraphs 4-6 may, within two months, have recourse to the procedure for settlement of disputes provided for in article ...

9. Pending the decision of the Special Committee, the decision taken by the coastal State shall remain provisionally valid. However, the State which has referred the matter to the Special Committee, pursuant to paragraph 8 above, may in addition request the latter to prescribe certain provisional measures. The Committee shall rule thereon within six weeks.

10. Every year, the decisions taken by the coastal State and the Special Committee and the agreement of the States concerned, as provided for in the preceding paragraphs, may be reviewed by the organization at the request of any of the interested parties. The provisions of paragraphs 2 to 9 shall apply to such review.

PROVISION VI

Formula A

1. The regulatory measures adopted to implement the preferential right of a coastal State may include catch allocation (quota by country) and/or such other supplementary measures as will be made applicable to vessels of non-coastal States engaged in fishing in the adjacent waters of the coastal State, including:

- (a) The establishment of open and closed seasons during which fish may or may not be harvested,
- (b) The closing of specific areas to fishing,
- (c) The regulation of gear or equipment that may be used,
- (d) The limitation of catch of a particular stock of fish that may be harvested.

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2. The regulatory measures adopted shall be so designed as to minimize interference with the fishing of non-coastal States directed to stocks of fish, if any, which are not covered by such measures.

Formula B

1. Measures necessary for maintaining, re-establishing or attaining the maximum yield from fishing shall be adopted by States and organizations. These measures shall be based on scientific data and take into account technical and economic considerations. They shall be adopted, subject to these articles, in the light of the regional situation and without discrimination as to form or substance.

2. The measures referred to in paragraph 1 shall be formulated having regard to the need to secure a supply of food for human consumption.

3. The measures referred to in paragraph 1 may include:

- (a) fixing the total allowable catch and its possible allocation;
- (b) regulation of fishing activity;
- (c) the establishment of closed seasons;
- (d) a temporary ban on fishing in certain areas of the sea;
- (e) any technical measures (relating, for example, to fishing gear, mesh sizes, fishing methods, minimum sizes of fish caught, etc.).

4. In accordance with the principles of rational exploitation and conservation, the regulatory measures referred to in paragraphs 1-3 shall be taken by the coastal State in its zone.

Vessels fishing in a zone subject to regulation under the conditions provided for in paragraph 4 shall respect the relevant regulations adopted by the coastal State.

The States whose flags are flown by such vessels shall take the necessary steps to ensure that these regulations are respected.

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PROVISION VII

Formula A

1. With respect to regulatory measures adopted pursuant to the present régime, those coastal States which are entitled to preferential rights, and/or special status with respect to conservation, have the right to control the fishing activities in their respective adjacent waters. In the exercise of such right, the coastal States may inspect vessels of other States and arrest those vessels violating the regulatory measures adopted. The arrested vessels shall, however, be promptly delivered to the flag States concerned. The coastal States may not refuse the participation of other States in controlling the operation, including boarding officials of the other States on the coastal States patrol vessels at the request of the latter States. Details of control measures shall be agreed upon among the parties concerned.
2. Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the present régime.
3. Nationals on board a vessel violating the regulatory measures in force shall be duly prosecuted by the flag State concerned.
4. Reports prepared by the officials of a coastal State on the offence committed by a vessel of a non-coastal State shall be fully respected by that non-coastal State, which shall notify the coastal State of the disposition of the case as soon as possible.

Formula B

1. The coastal State may stop, board and inspect fishing vessels within its zone, if it has valid reason to suspect that they have committed a breach of the fishery regulations as provided for in these articles.
2. The coastal State may also prosecute and punish offences committed by such vessels unless the flag State has established a procedure permitting the prosecution and punishment of breaches of the fishery regulations of the coastal State adopted in conformity with these articles.
3. In that case, the coastal State shall send a report attesting the breach of regulations to the flag State and shall furnish the flag State with any particulars constituting evidence that such breach has been committed. Within a period of six months from the receipt of the report attesting that breach, the flag State shall make known to the coastal State whether or not it has brought the matter before its judicial authorities so that proceedings may be instituted.
4. Should the flag State not bring the matter before its judicial authorities, or should it fail to reply, the coastal State shall have the right to refer the matter to its own courts.
5. If the flag State has decided to bring the matter before its judicial authorities, it shall inform the coastal State of the outcome of the proceedings.

- 7.4 Prevention and control of pollution and other hazards to the marine environment
- 7.5 International co-operation on the study and rational exploitation of marine resources

PROVISION VIII

1. A coastal State shall be recognized as having special status with respect to the conservation of fishery resources in its adjacent waters. Thus, the coastal State will have the right to participate, on an equal footing, in any survey on fishery resources conducted in its adjacent waters for conservation purposes, whether or not nationals of that coastal State are actually engaged in fishing the particular stocks concerned. Non-coastal States conducting the survey shall, at the request of the coastal State, make available to the coastal State the findings of their surveys and researches concerning such stocks.
2. Also, except for interim measures, no conservation measure may be adopted with respect to any stock of fish, without the consent of the coastal State whose nationals are engaged in fishing the particular stock concerned (or the majority of the coastal States in cases where there are three or more such coastal States).
3. A coastal State shall at the same time have the obligation to take, in co-operation with other States, necessary measures with a view to maintaining the productivity of fishery resources in its adjacent waters at a level that will enable an effective and rational utilization of such resources.

PROVISION IX

1. In order to assist in the development of the fishing capacity of a developing coastal State and thereby to facilitate the full enjoyment of its preferential right, there shall be international co-operation in the field of fisheries and related industries between the developing coastal State and other fishing States in concluding an agreement on the preferential right of that developing coastal State.
2. For the purpose of promoting the development of fishing industries and the domestic consumption and exports of fishery products of developing States, including land-locked States, developed non-coastal States shall co-operate with developing States with every possible means in such fields as survey of fishery resources, expansion of fishing capacity, construction of storage and processing facilities and improvements in marketing systems.

PROVISION X

Formula A

Co-operation between coastal and non-coastal States under the present régime shall be carried out, as far as possible, through regional fishery commissions. For this purpose, the States concerned shall endeavour to strengthen the existing commissions and shall co-operate in establishing new commissions whenever desirable and feasible.

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Formula B

1. Fishery organizations, hereinafter called "organizations" shall exercise the functions laid down in these articles. These organizations shall be responsible either for a region or for a given species.

States whose vessels fish or are concerned with and equipped for fishing within a region shall establish a regional organization if one does not already exist. Coastal States of the region, as well as any State whose vessels fish or are concerned with and equipped for fishing in this region, shall be members of this organization.

States whose vessels fish or are concerned with and equipped for fishing for certain species such as tuna and whales shall establish a sectoral organization. This organization shall be established on a regional or world-wide basis if a competent sectoral or regional organization does not already exist. Coastal States in whose zone this activity is exercised, as well as any State whose vessels fish or are concerned with and equipped for fishing for the species in question, shall be members of this organization.

2. The constitutions or rules of procedure of these organizations shall ensure their most effective operation. In particular, they shall provide that the measures referred to in paragraphs 4-6 are as a general rule adopted by a majority greater than a simple majority, but not necessarily unanimously, and that they are binding upon the States members of the organization.

3. Where an appropriate regional or sectoral organization has not yet been established, the coastal State concerned shall consult with other interested States if it is unable to take the action provided for under articles ... with respect to such an organization. The decisions taken by the coastal State after such consultations shall be reviewed each year pending the establishment of the organization.

4. The organization shall determine the procedures for applying the principles of rational exploitation and conservation as well as the basic principles of the measures to be adopted for this purpose.

5. Within the limits of their competence, they shall exercise the power to adopt the regulatory measures referred to in articles ... in any part of a region beyond the zone in which a coastal State exercises such powers in accordance with article ...

6. The organizations shall co-ordinate the scientific research programmes of member States in order to ensure the supply of appropriate scientific information.

7. Vessels fishing in the area of competence of an organization are bound to comply with the measures adopted by such organizations.

8. Flag States parties to this Convention shall take the necessary steps to ensure such compliance.

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9. The organization shall supervise the execution of its decisions.
10. Supervision shall be based, inter alia, on the examination of statistics which States members of the organization are required to compile and make available, and of all other data obtained from them.
11. Within the framework of an organization, its member States may decide, at the request of a coastal State, to establish in the zone of that State international fishery monitoring machinery for the purpose of reporting breaches of the regulations adopted by that State in accordance with article ... To this end, member States may appoint officers authorized to investigate breaches of the regulations of that State.
12. The provisions of article ... paragraph ... shall be applicable to breaches so established. The organization shall inform the coastal State and the flag State of the findings of any inquiries it has made. The organization shall be kept informed of the outcome of legal proceedings.
13. The activities of the organization may be supplemented, as necessary, by those of an international fisheries authority, either existing or to be set up, the function of which could be:
 - (a) to promote the establishment of new organizations and, where a competent organization does exist, to exercise the powers which would normally devolve upon such organizations;
 - (b) to encourage all types of technical assistance in respect of fisheries.

PROVISION XI

The provisions of these articles shall not affect the rights and obligations of States under existing international agreements relating to specific fisheries.

PROVISION XII

1. The provisions of these articles
 - shall not prejudice the maintenance of any existing special fisheries régime existing among States members of a customs union;
 - shall not preclude the establishment of a special fisheries régime among the States fishing for a particular region for that region or among States members of a customs union.
2. Where such a special régime exists, vessels of participating States fishing in the zone of another participating State shall be treated on the same footing as vessels of the latter for the purpose of article 8, paragraph 1.